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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,577	10/03/2000	Iwao Masuyama	723-939	5668
27562	7590	04/06/2004	EXAMINER	
NIXON & VANDERHYE, P.C. 1100 N. GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201			WHITE, CARMEN D	
			ART UNIT	PAPER NUMBER
			3714	
DATE MAILED: 04/06/2004				

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/677,577	MASUYAMA ET AL.
	Examiner Carmen D. White	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 December 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-8, 10-14, 23-29, 31-35, 43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-8, 10-14, 23-29 and 31-35 is/are rejected.
- 7) Claim(s) 43 and 44 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>16</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Objections***

Claims 28-29 and 44 are objected to because of the following informalities: line 28 of the claim recites "in said cartridge said cartridge is loaded". A word appears to be missing in this passage of the claim. The examiner suggests including the word --and— between the two recitations of "said cartridge". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6, 10-14, 23-27, 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-6, 10-14, 23-27, 31-35 recite the limitation "the game space" in the preamble. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 10-14, 23-27, 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Mical* et al (4,969,647) in view of *Dao* et al (5,835,077).

Regarding claims 2-6, 10-14, 23-27, 31-35, Mical and Dao teach all the limitations of the claims as discussed in the previous office action (*paper 14, 8/27/03*), which is incorporated herein by reference. Mical teaches a game system having, a game apparatus having game program storage means (#58) storing a game program and including a character data storage section to display a moving character movable on the game space (#24), processing means (#52) for executing the game program and display means (#23) to display an image based on the result of processing by the processing means that comprises a housing (#22) to be held by a player; and a change state detecting means related to the housing for detection of amount and direction applied to the housing, wherein the game program storage means stores game space data including image data to display a space for game play and a display control program causes the display means to display a game space based on the game space data; said game program storage means includes a character control program to read out a moving character stored in the character data storage section and enable control related to said at least the change of the housing based on an output of the change-state detecting means such that a display state of the moving character changes (Figures 1-4). While Mical teaches the detection of change of the image {rotation/inversion} due to a change in switches contained within the housing, Mical lacks the explicit disclosure of change-state detection related to an amount of a change direction/tilt applied to the housing. In an analogous electronic game apparatus, Dao teaches a control device that has accelerometers [acceleration sensors] that could be contained within a handheld device that provide change-state detection of a change

direction/tilt applied to the housing of the device (col. 1, lines 20-33; col. 4, lines 53-56; Fig. 1, #10). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the accelerometers of Dao into the hand held video display device of Mical to provide an easier means for providing input in order to invert, rotate or tilt the image.

Claims 7-8 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Mical* et al in view of *Dao* et al, further in view of *Saito*.

Regarding claims 7-8 and 28-29, Mical and Dao teach all the limitations of the claims as discussed above as well as in the previous office action (paper 14, 8/27/03), which is incorporated herein by reference. Mical further teaches the newly added feature of the game apparatus being portable and having the display means provided integrally on one main surface of the housing (Figures 1-3).

#### ***Allowable Subject Matter***

Claims 43-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Further, claim would be allowable if the claim objections, stated above, were corrected.

The following is a statement of reasons for the indication of allowable subject matter: Neither Mical, Saito, nor Dao teaches the feature of *the change state detecting means being enclosed within the cartridge*.

***Examiner's Response to Applicant's Remarks***

Applicant argues that *Mical* lacks the explicit disclosure of a change-state detection related to an amount of a change direction/tilt applied to the housing of the game apparatus. Applicant further argues that *Dao* fails to remedy this deficiency of *Mical*. The examiner has indicated, in the above claim rejections as well as in the previous office action, that *Mical* teaches the change state detection (rotation/inversion) of the housing of the game apparatus, via operating switches, which also rotates/inverts the image by the amount of change applied to the switches on the housing of the portable apparatus. However, the examiner cited *Dao* to teach accelerometers that provide the automatic detection of a change state of the housing without the need for switch input (Fig. 1, #10). *Dao* further teaches that the accelerometers (#12,#14, #16) could be small enough to be held in the hand of a user {col. 4, lines 53-56}. The accelerometers of *Dao* perform the same function of change state detection, whereby tilt and impact are detected, as applicant's instant claimed change-state detection means.

The examiner asserts that due to the fact that many virtual reality type games control character movement via movements detected from the actual user/players of the devices, game play is made easier, more realistic, fun and interactive for the players. *Dao* recognizes that this virtual type character control would be made easier by automatically sensing/detecting movement of a game apparatus' housing without user input. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the accelerometers of *Dao* into the housing of

Mical to automatically detect rotation/tilt, rather than for the user to have to manually push the switches for this detection.

The examiner has reconsidered the features of instant claims 43-44, which applicant argues for patentability and has found that they are patentably distinguishable from the prior art of record (see above). Applicant's asserts that instant claims 7 and 28 and those that depend from these claims teach the feature of the change-state detecting means being incorporated in a cartridge. However, the language of the instant claims state: *said change-state detecting means detecting at least one of an amount and a direction of a change applied to said housing of said portable game apparatus when accommodated in said cartridge*. This language is not a clear indication that the change-state detecting means is incorporated in the cartridge and therefore remains rejected (see above).

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***USPTO Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner's supervisor, Tom Hughes, who can be reached on 703-308-1806.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JESSICA HARRISON  
PRIMARY EXAMINER